UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FIELDTURF USA, INC., et al. Plaintiffs, v. SPORTS CONSTRUCTION GROUP, LLC., et al. Defendants.	CASE NO. 1:06 CV 2624 Judge Patricia A. Gaughan **SPORTS CONSTRUCTION GROUP'S REQUEST FOR CLARIFICATION OF THIS COURT'S DECEMBER 26, 2006 CASE MANAGEMENT ORDER**

Defendant Sports Construction Group, LLC, as the remaining defendant in this action, submits this Brief in Support of the Parties' Joint Request for this court to clarify the scope of discovery pursuant to this Court's Case Management Order entered December 26, 2006 (docket #21).

Claim Construction is Proceeding on Schedule

To date the parties have completed the exchange of the proposed terms and claim elements for construction. The next deadline is March 26, 2007 by which time the parties are to exchange preliminary claim constructions and extrinsic evidence. Defendant is nearing completion of that part of the process well in advance of the deadline.

Current Scope of Discovery

A problem, however, has arisen as to the scope of the initial phases of discovery in this case leading up to the ***Markman*** hearing scheduled for June of this year. The parties disagree as to whether discovery directed to the claims construction process should be burdened with discovery on such unrelated and highly sensitive matters including but not limited to Defendant's finances, bidding practices and customers.

Defendant has suggested that with the claims discovery deadline of May 1, 2007 and the ***Markman*** brief due on June 1, 2007, that the parties need to focus their attention on the patent issues at present and in the event plaintiffs' claims survive, then the parties can continue with the discovery on other matters that are not relevant to the ***Markman*** issues. This will lead to efficiency and the likelihood of being able to meet the necessary deadlines in this patent litigation, particularly since the non-expert discovery has a deadline extending out to November 1, 2007. Defendant agrees that the parties' various witnesses can reasonably be called back for further deposition on matters not related to ***Markman*** issues.

There is no doubt that discussing Defendant's finances before liability is even addressed is wasteful and prejudicial. Let's first find out if the football field infringes a valid patent, then talk about financial matters. This is the clear intent of the patent rules and the most efficient way to conduct patent infringement litigation - first liability, then damages.

To enable a free-for-all discovery process encourages frivolous patent infringement litigation. A party with a weak infringement case having conducted no or nearly no pre-filing investigation should not be encouraged to whip together a complaint and get an improper free look at an innocent Defendant's financial records. Patents are not now, and never have been, a tool to improperly invade a competitor's financial house before infringement is even discussed and patent terms are even defined.

Plaintiff has suggested that all discovery on all matters proceed simultaneously. To explain the difficulty with Plaintiff's proposal, attached as Exhibit 1 is the "Schedule A" affixed to Plaintiffs' 30(b)(6) notice of deposition. Of the 32 itemized "Topics for Deposition" only item 18 and item 20 remotely apply to the essential crux of this case associated with the important Markman discovery and filing deadlines.

Defendant also suggests that there is no need for a Protective Order at this time since the scope of ***Markman*** discovery does not reasonably implicate proprietary or privileged information, other than attorney work product which is not an issue. The whole point of ***Markman*** claim construction is the open discussion and review of the patent terms and patent claims, the particulars of the invention and whether Plaintiffs can preserve their right to patent protection and prove infringement.

Plaintiff has suggested that a broad-based protective order be implemented immediately and that counsel each mark documents to be privileged. Plaintiff's proposal would limit the public's access to an open discussion within the ***Markman*** proceedings and place the burden on counsel to impose on this court to remove a claim of privilege once it is attached to a particular document or piece of information. It would also potentially add the unnecessary burden of maintaining two sets of documents, some of which would be under seal, which should not be an administrative and cost burden at this stage of the litigation.

It is respectfully submitted that the parties should focus their attention and limited time resources on first addressing the ***Markman*** issues in the current discovery process and that no protective order is required at this juncture.

Respectfully submitted,

/s/ John K. Lind

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2007 a copy of the foregoing Defendant's Brief in Support of the Parties' Joint Request for Clarification was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. This pleading may be accessed through the Court's electronic filing system.

/s/ John K. Lind
One of the Attorneys for remaining Defendant,
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